

ORDINANCE 86A

ESTABLISHMENT AND ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS TO ESTABLISH AND ENFORCE CHILD SUPPORT ORDERS

I.

PURPOSE

The purpose of this Ordinance is to assist both the Tribes and the Department in carrying out their respective authorities and responsibilities.

The Tribes recognizes that their ability to enforce child support obligations, orders, and judgments will be enhanced with the establishment of procedures for the exchange of services and for the reciprocal recognition and enforcement of child support orders and judgments. The Tribes also recognizes and accepts that more appropriate child support determinations that relate to children enrolled in the Tribes will be made when the Department coordinates with the Tribes to refer appropriate classes of cases to the Tribes to be handled in the Tulalip Tribal Court. The Tulalip Tribal Court will apply only its own support and collection standards and laws. The Tribes recognizes that the setting of child support guidelines and collection standards by the Tribes is a proper exercise of its tribal sovereignty. The purpose of this Ordinance is to establish such procedures and to allow the Tribes to apply its support and collection standards in appropriate cases. The establishment of these procedures is in the best interests of the Indian families and especially Indian children who have a right and need to receive required support.

II.

DEFINITIONS

1. Child: Any person under the age of 18 who is not otherwise emancipated, self-supporting, married, or a member of the Armed Forces of the United States. For purposes of enforcing child support orders from jurisdictions other than the Tulalip Tribes under this Ordinance, "child" shall include persons over the age of 18 years for whom a support obligation has been set prior to the date the child turns 18, which provides for the support to extend beyond the age of 18.
2. Child Support Order: Any judgment or order of the Tulalip Tribal Court, Superior Court of the State of Washington, any tribal court order where that tribe clearly accords the

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- Tulalip Tribal Court reciprocal recognition, any court order or administrative order of another competent jurisdiction, or an administrative determination established by the Department ordering payment of a set or determinable amount of child support, and/or medical support.
3. Custodial Parent: The custodian of a child who is the mother, father or adoptive parent of a child.
 4. Custodian: Any person having the care, physical custody and control of any child or children.
 5. Department: The Washington State Department of Social and Health Services, Division of Child Support.
 6. Descendent: A person who is the biological child of an enrolled tribal member.
 7. Indian: A person who is an enrolled member of an Indian Tribe or a descendant of an enrolled tribal member.
 8. Judgment: The final determination of the rights of the parties in an action.
 9. Judgment Debtor: The party against whom a judgment has been entered.
 10. Medical Support Obligation: An obligation of a parent to provide reasonable health insurance coverage for his or her dependent child(ren), including Indian Health Service medical coverage.
 11. Obligee: A person to whom a child support debt is owed.
 12. Tulalip Tribal Court: The court established by the Tulalip Board of Directors pursuant to the constitution and Bylaws of the Tulalip Tribes and Ordinance 49 of the Tulalip Tribal Code.
 13. Register: To file a child support order or judgment in Washington State Superior Court or the Tulalip Tribal Court for enforcement and/or modification under the procedures referred to in this Agreement.
 14. Reservation: In this ordinance, Reservation as it relates to the Tulalip Indian Reservation or other federally recognized Indian Reservation will be consistent with the definition of the term "Indian Country" as defined in 18 USC 1151.
 15. Responsible Parent: A natural parent, adoptive parent, or stepparent of a child who

has been found to owe a duty to pay support monies.

16. Secretary: The Secretary of Washington Department of Social and Health Services, his/her designee or authorized representative.
17. Custodial Stepparent: The present spouse of the custodial parent who where such status shall exist and continue until the relationship is terminated by death, dissolution of marriage, court order pending dissolution, or other court order relieving the stepparent of any child support obligations.
18. Support Monies: Any monies or in-kind or traditional support recognized by the Tribes paid or provided to or on behalf of a child to satisfy a child support obligation whether denominated as child support, spousal support, maintenance, or any other such money or in-kind or traditional support which is intended to satisfy an obligation for support of any child, or to satisfy in whole or in part arrears or delinquency of such obligation. Support monies shall also include medical support obligations.
19. Tribes: The Tulalip Tribes, a federally recognized Indian Tribe confederated under a constitution adopted on November 23, 1935, and approved by the Commissioner of Indian Affairs on January 18, 1936.
20. Tribal Attorney or Spokesperson: A person who has been admitted to the Tulalip Tribal Court Bar pursuant to the Tulalip Tribal Code, or any applicable rule of the Tulalip Tribal Court.
21. Necessary Parties: In any case referred to the Tribes by the Department or any case brought before the tribal forums in which public assistance monies are being expended on behalf of any of the parties, the State shall be necessary party. In paternity actions all of the identified, alleged, or putative fathers shall be necessary parties. This includes the custodian, obligated parent and the child(ren).

III.

RECOGNITION AND ENFORCEMENT OF SUPPORT ORDERS NOT ESTABLISHED BY THE TULALIP TRIBAL COURT

- A. FULL FAITH AND CREDIT BY TRIBES: Except as allowed in part III B below, the Tribes shall give full faith and credit to a child support order from another jurisdiction when:

1. The child support obligation has been established; and
2. The child support obligation has been incorporated into an order, judgment, or administrative determination; and
3. The responsible parent is:
 - a. A member of the Tulalip Tribes or,
 - b. An Indian who lives within the boundaries of the Tulalip Reservation; or
 - c. A person employed by, or receiving monies (with the exception of per capita monies) from, the Tulalip Tribes, one of its subsidiaries, a Tribal enterprise or an Indian-owned business located and operating on the Reservation. This subcategory (c) applies only to the recognition and enforcement of orders to garnish wages according to the procedures set forth below; and
4. The custodian or dependent child
 - a. Has received public assistance on behalf of the child; or
 - b. Has applied for enforcement services with the Department or other state IV-D agencies; or
 - c. Has petitioned the Tulalip Tribal Court to enforce an existing court order or administrative determination on his or her own, without requesting the assistance of the Department; and
5. The Department, its designee, or an obligee, or the custodial parent who has not requested the Department for assistance, has submitted a written application to the Tulalip Tribal Court requesting such order or judgment be accepted as an order or judgment of the Tulalip Tribal Court; and
6. The Tulalip Tribal Court has made a finding, taking into account all relevant factors and considerations, that the state or tribal court or state agency issuing the child support order, judgment or administrative determination had the requisite jurisdiction in these matters; and
7. The party subject to a child support order may raise any defense he or she may have to such order or judgment in the Tulalip Tribal Court, that is not precluded by res judicata, including defenses based on tribal ordinances and laws including but not limited to tribal statutes of limitations Ordinance 49.1.15.2 and Ordinance 85.7.12

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establishing the statute of limitations on the collection of child support at five years prior to the filing of the action in the Tribal Court, and tribal custom. Any adjustment in a support order shall be deemed a credit and not deemed a modification of the child support order.

8. The Department or State agency entering the support order recognizes and gives the Tulalip Tribal Court's child support orders full faith and credit.
9. Subject to section III B below, if the provisions of this section are met, the Tribal Court shall issue an order making the foreign child support order an order of the Tulalip Tribal Court, and shall grant full faith and credit to the foreign child support order. Upon entry of such an order, all provisions of the Tulalip Tribal Code regarding judgments and execution shall be applicable.

B. MODIFICATION IN TRIBAL COURT: The child support order, judgment, or administrative determination originally established by a State court or the Department, which has been issued as a Tulalip Tribal Court Order, may be prospectively modified under the following circumstances:

1. The Tribal Court Order may not provide for payment by the responsible parent of more than a total of twenty five percent of the net earnings of the responsible parent for present or past obligations.
 - a. The Tulalip Tribal Court has continuing jurisdiction of the child support order for purposes of modification because the child, custodian and the responsible parent reside on the Tulalip Reservation; and
 - b. Each contestant has filed written consent allowing the Tulalip Tribal Court to make the modification and assume continuing, exclusive jurisdiction over the order; or
 - c. The state court no longer has continuing, exclusive jurisdiction of the child support order because that state no longer is the child's state of residence or the residence of a contestant.
2. In cases where the Department has entered an administrative order, and the custodial parent and/or child(ren) are receiving public assistance, modifications may be made by the Tribal Court where the Department brings an action as allowed under this part, consistent with the guidelines outlined above in Section III B or under the procedure adopted under part III C below.

Prospective modifications shall be considered under the following circumstances:

- a. By the filing of a petition by any necessary party or on a motion in an action to register a child support order followed by adequate notice to all parties, and a subsequent hearing before the Tulalip Tribal Court.
- b. A child support order shall only be modified under the following circumstances:
 - 1) There has been a significant change of circumstance, which is not temporary, for the responsible parent, custodial parent or the dependent child; or
 - 2) Enforcement of the existing child support order would cause extreme undue hardship on one or more necessary parties and modification of such an order adheres to the community's sense of fairness and would be in the best interest of the child(ren); or
 - 3) To establish a medical support obligation; or
 - 4) Where the necessary parties agree to the modification, and the modification will not harm the child(ren); or
 - 5) The original child support order was entered using imputed income figures or needs standard figures and as a result, the support order is not or was not consistent with actual income of the parties and the needs of the child(ren).

3. Any modifications will be prospective only.

- C. **CHARGE OFF OF SUPPORT ARREARAGES:** The Tribes recognizes that federal law prohibits retroactive modifications and that retroactive modifications would place the Department in noncompliance with the applicable federal regulations. In those cases where the Department is enforcing an administrative order or a court order for the collection of back support owed the Department and not the parent, the Department and the Tribes will develop a process to allow the tribal court to, upon request, grant a partial or total charge-off of support arrearage owed to the Department in compliance with RCW 74.20A.220, as it exists or is hereafter amended, and within the scope of authority delegated to the state's conference board. The Department shall be a necessary party and the adjustment shall be binding on the Department.
- D. **UNIFORM INTERSTATE FAMILY SUPPORT ACT (UIFSA):** The Tribes recognizes that the Washington State Legislature recently adopted Substitute House Bill 1560, the Department's version of UIFSA, effective July 1, 1994, which significantly affects the

Department's ability to modify another tribunal's child support orders including tribal orders. The Tribes does not agree that it is bound by the State's UIFSA.

- E. **DEPARTMENT'S LIMITED RESTRICTION ON COLLECTION:** Whenever the Tulalip Tribal Court accepts a State child support court order, judgment or administrative determination and issues its own order to enforce the State's order, the Tribal Court order shall be the order that the Department enforces against the judgment debtor in all subsequent proceedings and in all courts or administrative proceedings unless subsequently modified under procedures outlined in this Ordinance.
- F. **GARNISHMENT IN TRIBAL COURT:**
1. **Commencement of Action:** An action may be commenced by the Department or an obligee in the Tulalip Tribal Court against the Tribes or one of its enterprises, or an Indian-owned business located on the reservation to garnish wages of a person subject to a child support order where the wages are held by the Tribes, one of its enterprises or an Indian-owned business and owing to the employee, and provided that the Tulalip Tribal Court has: (a) entered an original child support order; or (b) entered a child support order as a Tulalip Tribal Court Order as required under Section III.
 2. **Limited Waiver of Sovereign Immunity:** The Tribes hereby gives a limited waiver of its sovereign immunity from suit on the following terms and conditions: the Tribes consents to suit only by the Department or an obligee for the purpose of enforcing child support orders where permitted by this Ordinance through the process of garnishment of the wages of an employee of the Tribes or a Tribal enterprise. This consent is effective only for the relief explicitly described in this section concerning the enforcement of child support orders obtained consistent with Tribal Law and this ordinance through the process of garnishment of wages owed by a responsible parent. This consent is effective only in the Tulalip Tribal Court. This limited waiver shall expire upon repeal of this Ordinance. The Tribes shall answer any written order of garnishment and shall hold the wages of any tribal employee in accordance with a garnishment order entered as a separate order issued by the Tulalip Tribal Court.
 3. **Payment of Wages by Tribes:** Upon receipt of the garnishment order from the Tulalip Tribal Court, the Tribes or Tribal enterprises shall pay a set or determinable amount of the judgment debtor's wages as might be held by the Tribes, or Tribal enterprise, to the Department's support registry (WSSR). The Tribal Court order shall specify the amount to be withheld and that all payments will be sent to WSSR unless the Tulalip Tribal Court order allows that the withheld wages may be paid directly to the obligee or the Tribes has established its own registry. The amount of wages that the court can order withheld will be set by Tribal law but shall not exceed twenty five

percent of the net income of the obligor responsible parent. The Tribes may, in its discretion, expand the assets subject to garnishments under this section to include Tribal per capita payments.

4. **Limitation of Tribal Liability:** Notwithstanding any other part or provision of this Ordinance, no judgment may be entered against the Tribe in such garnishment action which obligates the Tribes to pay over any moneys except for wages otherwise owned the employee/responsible parent and actually held by the Tribes for the judgment debtor at the time that the order of garnishment is made by the Tribal Court and is actually served on the Tribes or its enterprises and received by the appropriate payroll officer. Provided further, that the Tribes shall not, under any circumstances, be liable for the responsible parent's debts or payments of, any portion of the child support order, support monies, or any penalty, interest, cost or attorneys' fees if the Tribes fails to act as required by a Tulalip Tribal Court order or statute, including failure to answer the writ of garnishment.
5. **Provision of Information:** The Tribe agrees to provide information to the Department on whether a particular responsible parent is employed by the Tribes or one of its enterprises or has a reservation address for the purpose of allowing the State to determine whether to pursue enforcement of a child support order in the Tulalip Tribal Court. Nothing in this section of the Agreement prohibits the Department and Tribes from further defining, through its procedures, a further sharing of information in order to establish paternity or support obligations.

IV.

RECOGNITION AND ENFORCEMENT OF TRIBAL COURT ORDERS

FULL FAITH AND CREDIT BY DEPARTMENT: Whenever a child support obligation has been incorporated into a Tulalip Tribal Court order, if the Department shall not give complete full faith and credit, consistent with this Ordinance, to such tribal child support order the Department shall forfeit its authority to bring all actions under this ordinance. Any custodian or dependent child who is entitled to support under a Tulalip Tribal Court child support order may apply to the Department or may act independently to bring and enforce the Tulalip Tribal Court child support order against the responsible parent. Upon acceptance of the application, the Department will treat a tribal court order like any other child support order from another state or jurisdiction. All remedies of collection and enforcement of child support orders shall be applicable to the tribal court order as apply to state court orders, except as otherwise agreed to herein, without the imposition of any fee or cost, unless required by federal regulation and applied generally to all persons similarly situated.

V.

RECOGNITION AND ALLOCATION OF AUTHORITY TO ENTER AND ENFORCE CHILD
SUPPORT ORDERS AND PATERNITY ORDERS

- A. TRIBAL AUTHORITY IN ACTIONS COMMENCED AFTER THE DATE OF THIS ORDINANCE: All cases where the Department could initiate on behalf of a parent or guardian or on its own behalf an administrative or judicial action to establish child support, paternity, or an action to modify a tribal child support order or state child support order, previously entered, or an action to grant partial or total charge-off of support arrearage shall after the effective date of this Ordinance, may be brought in the Tulalip Tribal Court using the procedure set out in section III where:
1. The responsible parent, the custodian, or the child is a Tulalip Tribal member and all reside within the boundaries of the Reservation at the commencement of the action; or
 2. The responsible parent, the custodian and any other necessary party all agree, in writing, that the Tulalip Tribal Court is the appropriate forum at the commencement of the action; and
 - a. One or more live within the jurisdictional boundaries of the Tulalip Tribes; or
 - b. One or more is a tribal member and he or she has significant ties to the Reservation and the Tulalip Tribal Court would otherwise have authority to enter orders in the case; or
 3. The action is one to establish paternity and the determination of paternity will affect the enrollability of a child in the Tribes.
 4. The action is one for enforcement and the responsible parent is residing on the reservation and is either a Tulalip Tribal member or is a member of another Indian tribe and the other parties reside off-reservation.
- B. REPRESENTATION: The Department and the Tribes may elect to have tribal officials initiate and prosecute matters under this part. The tribal prosecutor may represent the Department's financial interest in these cases or will provide the Department notice and opportunity to represent its interest.

- C. **IMPLEMENTATION:** The procedures set out in part VI shall apply to the implementation of this part.
- D. **TRIBAL AUTHORITY:** Nothing in this Ordinance is intended to, nor shall affect, the inherent authority of the Tribes to initiate any action in Tribal, State or Federal Court to enforce any right of the Tribes or of any of its members.
- E. **INDIVIDUAL RIGHTS:** Nothing in this Ordinance shall limit the rights of individuals to bring their own separate child support or paternity actions in any forum they chose.

VI.

ESTABLISHMENT OF CHILD SUPPORT OBLIGATIONS IN TRIBAL COURT

Procedures exist in the State forums to establish child support obligations and set child support amounts. For the Tribes and the Department to process cases under this Agreement in the tribal forum it is necessary to develop tribal child support schedules.

- A. **GUIDELINES:** The Tribes shall establish one set of guidelines by law, or by judicial or administrative action, as the Tribes determines appropriate, for setting, enforcing, and modifying child support obligations in tribal court.
 - 1. **Minimum Criteria:** The guidelines will include, at a minimum:
 - a. A presumptive, uniform child support schedule;

Written criteria for any deviation from the child support, including, but not limited to: Tribal custom and tradition, which is the common law of the Tribes, in determining the amount of support, its method of payment and the sufficiency of compliance of the responsible parent;
 - b. Provisions for the establishment and enforcement of medical support, including providing for the child(ren)'s health insurance coverage, IHS eligibility, or other means;
 - c. Take into consideration all earnings and income of both parents; and
 - d. Provide for specific, descriptive, numeric criteria which will result in a computation for determining the child support obligation.
 - 2. **Availability:** The Tribes shall make these guidelines available to all persons whose duty it is to set child support amounts.

- B. PROCEDURES: The Tribes shall institute procedures to (1) establish support obligations; (2) prospectively modify support obligations; (3) establish paternity by order of a court of competent jurisdiction or by administrative process; and (4) establish a process for immediate wage withholding.
1. The State as a Party to the Proceedings: The procedures will include provisions to allow the Department to seek establishment and enforcement of child support order where:
 - a. Public assistance benefits are being paid or have been paid to one of the parties to the action in tribal court; or
 - b. Where the custodian applies for child support services from the Department; or
 - c. The Department receives an interstate referral for child support services.
 2. Support Payments Applied to Support Obligation: An obligated parent will receive credit for support monies paid in accordance with the child support order and will reduce, dollar for dollar equivalent, the amount of his or her support obligation.
 3. Tribal Custom as Affirmative Defense: Tribal custom or tradition may be raised as an affirmative defense in any Tulalip Tribal Court proceeding brought under or in furtherance of this Agreement.
- C. CASE REFERRAL BACK TO THE DEPARTMENT: The Tribes shall refer cases back to the Department within 20 days: (1) when the requested action has been completed; or (2) where the Tulalip Tribal Court determines that it is not in the best interest of the child(ren) to proceed; or (3) where the Tulalip Tribal Court determines it is without jurisdiction; or (4) when the Tribes declines the referral.